

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-2680 of 2023

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

1. For hearing of CMA No.12873/24
2. For hearing of main case

**04.03.2025**

Mr.Abdul Naeem Qureshi, advocate for the petitioners.

Mr.Muhammad Akram Tariq, advocate for the Respondents No.2 & 3.

Mr.Khaliq Ahmed, DAG.

Syed Hussain, AAG.

----

## **JUDGMENT**

**Muhammad Iqbal Kalhoro, J:** Petitioners have impugned a judgment dated 03.05.2023 passed by Respondent No.1 dismissing their revision application filed against an order dated 28.10.2000, passed by respondent No.2 Chairman Evacuee Trust Property Board, whereby he had cancelled PTD dated 06.12.1968 regarding property No.MR-4/25, situated at Karachi. Petitioners have claimed to be bonafide purchaser of the suit property from the previous allottees namely Mr.Usman in whose favour the said PTD was issued on 06.12.1968 after the cut-off date in June 1968.

2. The case of the petitioners is that the original order was passed against the persons who were no more in the field as the property had been meanwhile purchased by the petitioners through registered sale deed. Before respondent No.2, Chairman ETPB, the Petitioners were not even the party and they were not heard either, hence the order passed by the Chairman ETPB cancelling PTD was not sustainable in law. The petitioners should have been made party in the said proceedings being predecessor-in-interest; their absence has rendered the same order bad in law.

3. On the other hand, learned counsel for respondents No.2 and 3, DAG and AAG have supported the impugned order.

4. We have heard the parties and perused material available on record and taken guidance from the case law cited at bar. A perusal of record shows that on 28.10.2000 respondent No.2 passed the order cancelling the PTD on the ground that there was no record that the price was paid from personal compensation book of the transferee. Although, when the order

was passed by the Chairman ETPB, respondent No.2, the cited respondents in whose favour PTDs dated 08.04.1967 and 06.12.1968 were issued were not present, but the Chairman had called the record and a representative of Settlement Department had appeared alongwith PTD register for a perusal of the court.

5. The Chairmen perused the record and found that compliance of Section 10 of Evacuee Trust Properties (Management and Disposal) Act, 1975 was not made. The Chairman found that there was no record that the allottees of PTD were bonafide purchasers or they had paid payment from their personal compensation book.

6. It was not a disputed fact that the property described as Sanataram Dharam Sabha was a trust property and after partition in 1947 on migration of the trustees, the property was considered as evacuee trust property and was notified in the Gazette of West Pakistan dated 19.05.1962 at S.No.193 and in the Gazette of Pakistan dated 15.7.1963 and 09.8.1963 at S.No.310 as Evacuee Trust Property. In view of such earlier notifications declaring the property as Evacuee Trust Property, heavy burden was on the petitioners or their predecessor-in-interest to produce evidence to show compliance of Section 10 of the Act, 1975; or that the property was available with Settlement Authorities for allotment, they failed to cite any such evidence, even the record produced by the Settlement Department did not bear any evidence in this regard.

7. The Chairmen, therefore, has observed in the order that although the Settlement Authorities were in knowledge of the nature of the impugned property as Trust Property, yet they issued PTD malafide in connivance with the transferees, who were neither refugees, nor there was any evidence of that they had pay payment from personal compensation book. It is also recorded that the conditions for validations of transfer contained in Section 10 were not fulfilled.

8. However, when this order was challenged by the petitioners in the year 2023 before Respondent No.1, he heard them and decided revision application observing that the revision application is hopelessly time barred having been filed after almost 23 years of the impugned order. Yet, he has proceeded to examine merits of the case and in Para 7 of the impugned order has observed in clear terms that petitioners have failed to produce any documentary evidence to support the claim that their predecessor-in-interest had been transferred property as per conditions set out in Section 10 of the Act 1975.

9. We have asked the learned counsel to produce any evidence before us to show that their predecessor-in-interest were the bona fide transferee having met all the three conditions provided in Section 10 i.e. verified claim; in satisfaction thereof, the PTD was issued before June 1968, having utilized the property bona-fide; or any other evidence that they had paid from personal compensation book, or any documents supporting any applications to the Settlement Department and its due process ensuing the same, except relying upon the case law 2009 SCMR 1223.

10. On the other hand, respondent No.1 has observed in detail in the impugned order that when the PTD was issued, after a cut-off date, the impugned property admittedly was in trust and it was not available for transfer to any one to satisfy any verified claim, as the property was not a part of compensation pool. Besides, the basic ingredients contained in Section 10 of the Act 1975 were conspicuously lacking. The respondent No.1 has further proceeded to rely upon the Supreme Court judgment in this regard reported as 2014 SCMR 1478 and 2000 SCMR 1929 from which we have also taken guidance.

11. Even the claim of the petitioners that they are bonafide purchaser of the property has been dealt with in the impugned order, it has been observed that validity of subsequent transaction is always founded upon the genuineness of the foundational allotment order. If any infirmity emerges in the title of the seller, that will always travel with the purchaser, and he is precluded to raise plea of protection under the law as a subsequent purchaser. Because subsequent purchaser carries no independent right, title or interest in the land except the one he has inherited from his predecessor-in-interest. When the title of the predecessor-in-interest in the land is not without a doubt, the subsequent transaction will not stand. We therefore, of the view that the impugned order or the order passed by the respondent No.2 Chairman Evacuee Trust Property Board dated 28.10.2000 do not suffer from any illegality or misreading or non-reading of any evidence produced before them. This being the position, we find no merits in the constitutional petition and accordingly dismiss the same alongwith listed application.

This petition is disposed of in above terms.

**JUDGE**

**JUDGE**